ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE FAILLA

UNITED STATES OF AMERICA

- v. -

IRVIN ORTIZ,
a/k/a "Goonie,"
RICARDO GARCIA,
a/k/a "Bucky,"
ELIJAH DAVILA,
a/k/a "Montana,"
SAMUEL SERRANO,
a/k/a "Smaxx,"
MESSIAH PERRY,
a/k/a "Showtime,"
PABLO CHEVERE,
a/k/a "Splash,"
GLADYS MORALES,
a/k/a "La Bruja,"
KENNETH MERCADO,
a/k/a "Fly,"
a/k/a "Twin," and
ANDREA BELL,
a/k/a "Andrea Martin,"
a/k/a "Drea,"

Defendants.

SEALED INDICTMENT

15 Cr. ___ ( )

15 CRIM 608

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: SEP 09 2015

COUNT ONE
(Racketeering Conspiracy)

The Grand Jury charges:

The Enterprise

1. At all times relevant to this Indictment, IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES,

a/k/a "La Bruja," and KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendants, and others known and unknown, were members and associates of the Taylor Avenue Crew, ("Taylor Avenue Crew" or the "Enterprise"), a criminal organization whose members and associates engaged in, among other activities, narcotics trafficking, attempted murder, and murder. The Taylor Avenue Crew operated principally in and around the Bronx, New York.

2. The Taylor Avenue Crew, including its leadership, its membership, and its associates, constituted an "enterprise," as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact, although not a legal entity. The Enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise. At all times relevant to this Indictment, the Enterprise has engaged in, and its activities affected, interstate and foreign commerce. The defendants participated in the operation and management of the Enterprise and participated in unlawful and other activity in furtherance of the conduct of the Enterprise's affairs.

3. From at least in or about 2012 up to and including on or about the date of the filing of this Indictment, members and associates of the Taylor Avenue Crew were engaged in a series of

violent disputes with a rival street gang hailing from Leland Avenue in the Bronx (the "Leland Avenue Crew"). During these disputes, members and associates of the Taylor Avenue Crew committed multiple shootings and assaults against members and associates of the Leland Avenue Crew. Some of the members of the Taylor Avenue Crew are also members of the Bloods gang, whereas some of the members of the Leland Avenue Crew are also members of the Crips gang.

4. Members and associates of the Taylor Avenue Crew sold cocaine base, commonly known as "crack cocaine," primarily in and around Taylor Avenue in the Bronx, New York. The Taylor Avenue Crew controlled crack cocaine sales within this area by prohibiting and preventing non-members, outsiders, and rival narcotics dealers from distributing crack cocaine in the area controlled by the Enterprise.

5. Certain members and associates of the Taylor Avenue Crew committed and agreed, attempted, and threatened to commit acts of violence to protect and expand their drug trafficking operation and to protect fellow members and associates of the Enterprise. These acts of violence included assaults, attempted murder, and murder intended either to protect the Enterprise's drug territory, retaliate against members of rival gangs who had encroached on the territory controlled by the Enterprise, or to

otherwise promote the standing and reputation of the Taylor Avenue Crew amongst rival gangs.

Purposes of the Enterprise

6. The purposes of the Enterprise included the following:

a. Preserving and protecting the power, territory, and profits of the Enterprise through murder, attempted murder, and other acts of violence, and threats of violence.

b. Promoting and enhancing the Enterprise and the activities of its members and associates.

c. Keeping victims and potential victims in fear of the Enterprise and its members and associates through acts and threats of violence.

d. Providing assistance to members and associates who committed crimes for and on behalf of the gang.

e. Enriching the members and associates of the Enterprise through, among other things, the distribution and sale of narcotics, including crack cocaine.

f. Protecting the enterprise and its members and associates from detection and prosecution by law enforcement authorities through acts of intimidation and violence against potential witnesses to crimes committed by members of the enterprise.

Means and Methods of the Enterprise

7. Among the means and methods employed by the members and associates in conducting and participating in the conduct of the affairs of the Enterprise were the following:

a. Members and associates of the Enterprise committed, conspired, attempted, and threatened to commit acts of violence, including murder, to protect and expand the Enterprise's criminal operations, and in connection with the rivalries with members of other street gangs, including the Leland Avenue Crew.

b. Members and associates of the Enterprise used threats of violence and physical violence against other members and associates to enforce and maintain discipline within the Enterprise.

c. Members and associates of the Enterprise committed, conspired, attempted, and threatened to commit acts of violence, including murder and attempted murder, against rival gang members and other individuals adverse to the Enterprise.

d. Members and associates of the Enterprise promoted and celebrated the criminal conduct of the enterprise, namely the narcotics distribution, acts involving violence, and firearm usage, in rap music and on social media websites such as YouTube and Facebook.

e. Members and associates of the Enterprise obtained, possessed, and used firearms.

f. Members and associates of the Enterprise distributed controlled substances, including crack cocaine.

g. Members and associates of the Enterprise committed acts of intimidation and made threats as a means of deterring and punishing any potential witnesses to their crimes and in connection with protecting the Enterprise and its members and associates from detection and prosecution by law enforcement authorities.

The Racketeering Conspiracy

8. From at least in or about 2012, up to and including on or about the date of the filing of this Indictment, in the Southern District of New York and elsewhere, IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," and KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendants, and others known and unknown being persons employed by and associated with the enterprise described in Paragraphs One through Seven of this Indictment, to wit, the Taylor Avenue Crew, knowingly combined, conspired, confederated, and agreed together and with each other to violate the racketeering laws of the United States, to wit, Section 1962(c) of Title 18, United

States Code, that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Taylor Avenue Crew, which was engaged in, and the activities of which affected, interstate and foreign commerce, through a pattern of racketeering activity consisting of:

a. multiple acts involving murder, chargeable under the following provisions of state law:

i. New York Penal Law, Sections 20.00, 110.00 and 125.25 (attempted murder);

ii. New York Penal Law, Sections 105.15 and 125.25 (conspiracy to murder);

iii. New York Penal Law, Sections 20.00, 125.25, and 125.27 (murder);

b. multiple acts involving the distribution of controlled substances, including crack cocaine, in violation of laws of the United States, namely Title 21, United States, Code, Sections 812, 841(a)(1), 841(b)(1)(A), and 846, and Title 18, United States Code, Section 2.

9. It was a part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the Enterprise.

(Title 18, United States Code, Section 1962(d).)

COUNT TWO
(Conspiracy to Commit Murder in Aid of Racketeering Activity)

The Grand Jury further charges:

10. At all times relevant to this Indictment, the Taylor Avenue Crew, as more fully described in Paragraphs One through Seven of this Indictment, which are realleged and incorporated by reference as though set forth fully herein, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact which was engaged in, and the activities of which affected, interstate and foreign commerce. The Enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise.

11. At all times relevant to this Indictment, the above-described Enterprise, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder in violation of the laws of New York State, and acts involving drug trafficking in violation of 21 U.S.C. §§ 812, 841, and 846.

12. In or about March 2015, in the Southern District of New York and elsewhere, ELIJAH DAVILA, a/k/a "Montana," the defendant, and others known and unknown, as consideration for

the receipt of, and as consideration for a promise and agreement to pay, a thing of pecuniary value from the Taylor Avenue Crew, and for the purpose of gaining entrance to and maintaining and increasing position in the Taylor Avenue Crew, an enterprise engaged in racketeering activity, as described above, knowingly conspired to murder a rival gang member, in violation of New York Penal Law, Sections 125.25 and 105.15.

(Title 18, United States Code, Section 1959(a)(5).)

COUNT THREE
(Murder in Aid of Racketeering Activity)

The Grand Jury further charges:

13. Paragraphs 10 and 11 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

14. On or about March 3, 2015, in the Southern District of New York, ELIJAH DAVILA, a/k/a "Montana," the defendant, and others known and unknown, as consideration for the receipt of, and as consideration for a promise and agreement to pay a thing of pecuniary value from the Taylor Avenue Crew, and for the purpose of gaining entrance to and maintaining and increasing position in the Taylor Avenue Crew, an enterprise engaged in racketeering activity, as described above, intentionally and knowingly murdered, and aided and abetted the murder of Pablo Beard, that is, with the intent to cause the death of Beard and under circumstances evincing a depraved indifference to human

life, did recklessly engage in conduct which created a grave risk of death to another person and thereby caused the death of Beard, in the vicinity of 1512 Leland Avenue, Bronx, New York, in violation of New York Penal Law, Sections 125.25 and 20.00.

(Title 18, United States Code,
Sections 1959(a)(1) and 2.)

COUNT FOUR
(Assault and Attempted Murder in Aid of Racketeering Activity)

The Grand Jury further charges:

15. Paragraphs 10 and 11 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

16. On or about August 21, 2015, in the Southern District of New York, KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendant, and others known and unknown, as consideration for the receipt of, and as consideration for a promise and agreement to pay, a thing of pecuniary value from the Taylor Avenue Crew, and for the purpose of gaining entrance to and maintaining and increasing position in the Taylor Avenue Crew, an enterprise engaged in racketeering activity, as described above, intentionally and knowingly assaulted several individuals with a dangerous weapon; attempted to murder an individual; and aided and abetted the same, to wit, MERCADO, the defendant, shot at members of the Leland Avenue Crew resulting in bodily injury to three victims, in the vicinity of 1820 Archer Street, Bronx, New

York, and aided and abetted the same, in violation of New York Penal Law, Sections 20.00, 125.25, 120.05, and 110.00.

(Title 18, United States Code, Sections 1959(a)(3), 1959(a)(5), and 2.)

COUNT FIVE
(Narcotics Conspiracy)

The Grand Jury further charges:

17. From at least in or about 2012, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," and ANDREA BELL, a/k/a "Andrea Martin," a/k/a "Drea," the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

18. It was a part and an object of the conspiracy that IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," and ANDREA BELL, a/k/a "Andrea Martin," a/k/a "Drea," the defendants, and others known and unknown, would and

did distribute and possess with intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

19. The controlled substance that IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," and ANDREA BELL, a/k/a "Andrea Martin," a/k/a "Drea," the defendants, conspired to distribute and possess with the intent to distribute was 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, commonly known as "crack cocaine," in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

COUNT SIX
(Murder in Connection with a Drug Crime)

The Grand Jury further charges:

20. On or about March 3, 2015, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, namely, the narcotics conspiracy charged in Count Five of this Indictment, ELIJAH DAVILA, a/k/a "Montana," the defendant, and others known and unknown, intentionally and knowingly killed and counseled,

commanded, induced, procured, and caused the intentional killing of Pablo Beard, and such killing resulted.

(Title 21, United States Code, Section 848(e)(1)(A); Title 18, United States Code, Section 2.)

COUNT SEVEN
(Firearms Offense)

The Grand Jury further charges:

21. From at least in or about 2012 up to and including on or about the date of the filing of this Indictment, in the Southern District of New York and elsewhere, IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," GLADYS MORALES, a/k/a "La Bruja," and KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendants, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, namely, the racketeering conspiracy charged in Count One of this Indictment, knowingly did use and carry firearms, and, in furtherance of such crime, did possess firearms, and did aid and abet the use, carrying, and possession of firearms, some of which firearms were discharged at rival gang members.

(Title 18, United States Code, Sections 924(c)(1)(A)(iii) and 2.)

COUNT EIGHT
(Firearms Offense)

The Grand Jury further charges:

22. On or about March 3, 2015, in the Southern District of New York, ELIJAH DAVILA, a/k/a "Montana," the defendant, willfully and knowingly, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the conspiracy to commit murder in aid of racketeering charged in Count Two of this Indictment, and the murder in aid of racketeering charged in Count Three of this Indictment, did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and did aid and abet the use, carrying, and possession of a firearm, and in the course of that crime did cause the death of a person through the use of a firearm, which killing is murder as defined in Title 18, United States Code, Section 1111(a), to wit, DAVILA caused the death of Pablo Beard by shooting Beard, and aiding and abetting the same, in the vicinity of 1512 Leland Avenue, Bronx, New York.

(Title 18, United States Code, Sections 924(j) and 2.)

SPECIAL FINDINGS AS TO ELIJAH DAVILA

23. Counts Three, Six, and Eight of the Indictment are realleged and incorporated by reference as though fully set forth herein. As to Count Three of the Indictment, alleging the murder of Pablo Beard in aid of racketeering; Count Six of the

Indictment, alleging murder in furtherance of a drug crime; and Count Eight of the Indictment, alleging the use of a firearm to murder Pablo Beard in connection with a crime of violence, the defendant ELIJAH DAVILA, a/k/a "Montana":

a. was 18 years of age or older at the time of the offense;

b. intentionally killed Pablo Beard (Title 18, United States Code, Section 3591(a)(2)(A));

c. intentionally inflicted serious bodily injury that resulted in the death of Pablo Beard (Title 18, United States Code, Section 3591(a)(2)(B));

d. intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Pablo Beard died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C)); and

e. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Pablo Beard died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D)).

FORFEITURE ALLEGATION AS TO COUNT ONE

24. The allegations contained in Count One of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 1963. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given to IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, a/k/a "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," and KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendants, that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 1963 in the event of any of these defendants' conviction under Count One of this Indictment.

25. IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," and KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," the defendants:

a. have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

b. have an interest in, security of, claim against, and property and contractual rights which afford a source of influence over, the Enterprise named and described herein which the above-named defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2); and/or

c. have property constituting and derived from proceeds obtained, directly and indirectly, from the aforesaid racketeering activity, in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3).

26. The interests of the above-named defendants subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a) include the amount of gross proceeds received by the defendants derived from racketeering activities as alleged in Count One of this Indictment.

27. The above-named defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

Substitute Assets Provision

28. If any of the property described above as subject to forfeiture, as a result of any act or omission of the above-named defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 18 U.S.C. § 1963(m), and 28 U.S.C. § 2461, to seek forfeiture of any other property of the above-named defendants up to the value of the forfeitable property.

(Title 18, United States Code, Section 1963.)

FORFEITURE ALLEGATION AS TO COUNT FIVE

29. As a result of committing the controlled substance offense charged in Count Five of this Indictment, IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," and ANDREA BELL, a/k/a "Andrea Martin," a/k/a "Drea," the defendants, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting or derived from any proceeds the defendants obtained directly or indirectly as a result of the offense and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the offense charged in Count Five of this Indictment.

Substitute Assets Provision

30. If any of the above-described forfeitable property, as a result of any act or omission of IRVIN ORTIZ, a/k/a "Goonie," RICARDO GARCIA, a/k/a "Bucky," ELIJAH DAVILA, a/k/a "Montana," SAMUEL SERRANO, "Smaxx," MESSIAH PERRY, a/k/a "Showtime," PABLO CHEVERE, a/k/a "Splash," GLADYS MORALES, a/k/a "La Bruja," KENNETH MERCADO, a/k/a "Fly," a/k/a "Twin," and ANDREA BELL, a/k/a "Andrea Martin," a/k/a "Drea," the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty,

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 21, United States Code, Section 853.)

Foreperson

PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Defendants.

SEALED INDICTMENT

15 Cr. ___ ( )

(18 U.S.C. §§ 924(c), 924(j), 1959,
1962, 1963, and 2;
21 U.S.C. §§ 846, 848(e), and 853.)

A True Bill

[signature]
Foreperson.

PREET BHARARA
United States Attorney.

9/3/15 - Filed Sealed Indictment
cc A/W's issued
J Gorenstein
USMJ